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APR 22 2008

OFFICE OF PETITIONS

In re Application of	:	
Linda Hockersmith	:	
Application No. 09/766,427	:	ON PETITION
Filed: January 18, 2001	:	
Attorney Docket No. IMET0050	:	

This is a decision on the petition, filed January 9, 2008, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

This application initially became abandoned for a failure to reply within the meaning of 35 USC 133 to the final Office action of July 31, 2003, which set a shortened period for reply of three months. As no reply was filed, and no extensions of time were obtained, the application became abandoned at midnight October 31, 2003. On March 9, 2004, a petition was filed to revive the application under the provisions of 37 CFR 1.137(b) for the purpose of continuity only with Application No. 10/746,352 filed December 23, 2003. The petition was granted in a decision mailed May 11, 2004 and the application was again abandoned in favor of the continuing application. It is noted that a Status Letter was filed on October 17, 2006, followed by the present petition on January 1, 2008.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item 3.

In this regard petitioner has not met his burden of proof to establish to the satisfaction of the Director that the entire delay in prosecution was herein unintentional within the meaning of 35 U.S.C. 41(a)(7) and 37 CFR 1.137(b). In fact, the showing of record is that applicant deliberately withheld a reply to the final Office action of July 31, 2003 in this application, since the original petition to revive was for copendency only with the continuing application. An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken, and now seeks, on petition to remit the deliberately withheld reply. Maldaque, at 1478; Lawman, 73 USPQ2d at 1637-38; Lumenyte Int'l Corp. v. Cable Lite Corp., 1996 U.S. App. LEXIS 16400, 1996 WL 383927 (Fed. Cir. July 9, 1996) (unpublished).

Any renewed petition may be addressed as follows:

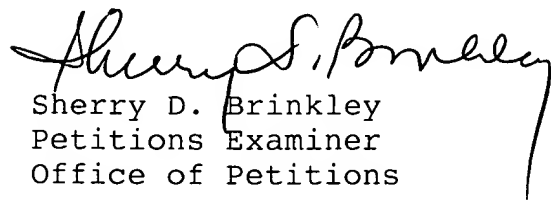
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The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions